IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

Crl.Rev.Pet.No. 2527 of 2004(A)

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CRA.458/2003 of ADDL. SESSIONS COURT (ADHOC), THRISSUR
CC.623/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

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REVN. PETITIONER: APPELLANT:

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BENOY, S/O. K.G.NAIR,
`UPASANA', 11/155 RAMAVARMAPURAM,THRISSUR-680 631.

BY ADV. SRI.T.O.XAVIER

RESPONDENTS: RESPONDENT & STATE:

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1. E.C.KRISHNAN, S/O. CHOKKALINGAM,
DOOR NO.1/83, AYYANTHOLE, THRISSUR-680 003.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.T.RAJASEKHARAN NAIR
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 18/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**V. RAMKUMAR, J.**

**Crl. R.P. No. 2527 OF 2004 A**

**Dated this the 18th day of September, 2007**

**O R D E R**

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.623/2002 on the file of the J.F.C.M.-I, Thrissur challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner submitted that the cheque in question was a signed blank cheque kept for the purpose of being given to customers while purchasing copra and the complainant who was given employment under the father of the accused was misusing the same. In the first place, this is a version which was emphatically denied by the complainant examined as PW1. Secondly, both the courts did not accept the said defence. It is opposed to human conduct for a person to keep signed blank cheques to be handed over on a future date to customers. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

5. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided he complies with the

condition hereinafter mentioned. The cheque amount is Rs.1,50,000/-. The cheque was issued in the year 1998. Giving allowance to the efflux of time the compensation fixed by the court below was Rs.1,75,000/-. The learned counsel for the revision petitioner would submit that he had deposited Rs.25,000/- before the trial court pursuant to the orders of the first appellate court and another sum of Rs.50,000/- pursuant to orders of this court. If he has already deposited Rs.75,000/- what remains is Rs.1,00,000/- (Rupees one lakh only) which he shall pay to the 1st respondent complainant by way of compensation under section 357(3) Cr.P.C. within five months from today. If he pays the balance amount as aforesaid then he need undergo only imprisonment till the rising of the court. If he commits default in the payment, he shall undergo simple imprisonment for three months. If no amount is deposited before the trial court, the liability of the petitioner shall be Rs.1,75,000/- as fixed by the court below.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

**(V. RAMKUMAR, JUDGE)**

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